



**EPA Office of Compliance
Enforcement Targeting and Data Division**

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Preliminary Results from the Enforcement Action Definitions Workgroup

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Surveys were sent to all Regions

- Surveys for FEDERAL reporters
- Surveys for STATE/LOCAL reporters were also requested
- Surveys covered Minimum Data Requirements (MDRs) for enforcement reporting.
- Surveys requested input on completeness of current MDRs.
- Surveys were completed 1st quarter, FY2007.

WHO RESPONDED?

- Federal: R1, R2, R3, R5, R6, R7, R8, R9, R10
- State and Local Agencies:
 - R1: CT, ME, NH, RI, VT
 - R2: NY
 - R3: DC, DE, MD, PA, VA, WV
 - R6: LA, AR
 - R7: IA, MO, NE
 - R9: AZ, AZ-Maricopa Co, AZ-Pima Co, AZ-Pinal Co, CARB, CA-Mojave, CA-Monterey, CA-Bay Area, CA-Butte, CA-El Dorado, CA-Feather, CA-Glenn, CA-Great Basin, CA-San Joaquin, CA-San Luis O, CA-Santa Barbara, CA-Siskiyou, CA-Tuolumne, CA-Ventura, CA, Yolo Solano, CA-Amador Co, CA-San Diego, NV, NV-Clark Co, NV, Washoe Co, HI

FEDERAL SURVEYS

- ICIS VS AFS: Not all Regions are reporting all enforcement actions to both AFS and ICIS. *It was decided that all enforcement actions need to be in both AFS and ICIS until modernization.*
- Notices of Violation: Not all Regional Offices were reporting NOVs to AFS. *All Regions are advised to report NOVs to AFS.*

FEDERAL SURVEYS-cont

- Administrative Law Judges (ALJ): Some use of ALJs is reported (however rarely used), but never reported to AFS. *It doesn't appear that we need action types for this type of activity in AFS.*
- Penalty Reporting: We appear to have a problem with assessed penalty reporting. Some Regions are reporting only final penalties, another was not reporting penalties in AFS, and still others indicate that all enforcement activity is in ICIS. *Consistency. All enforcement activity will be reported in both AFS and ICIS until modernization.*

FEDERAL SURVEYS-cont

- Non-Compliance (Violation) Start Date: Very few Regions report tracking this information. *It will be difficult to implement generated compliance status in a new system without this information.*



FEDERAL SURVEYS-cont

- New Action Types Requested:
 - Returned Civil Referral Case
 - HPV Case Dropped, Source NOT in Compliance--*Use of C7-Closeout Memo Issued will suffice*
 - Complaint Filed by US Attorney
 - Federal Facility Compliance Agreement
 - 113(a) Order on Consent
 - State Administrative Penalty Orders
 - CLEAR DISTINCTIONS ON NOVs and AOs
- More information is needed to determine exactly what actions should be added.*

STATE SURVEYS

- **NOV Reporting:** Many agencies indicated that their NOV process is a FORMAL ACTION. An additional action type is needed to capture NOVs with proposed penalties. *Penalty Letters? Is this where State Administrative Penalty Order action types can help?*



State Administrative Penalty Order Action Types can be similar to the Federal Values:

- State/Local Administrative Penalty Order Complaint Filed: Date a proposed complaint/petition is signed by a director or secretary with a proposed penalty. This is the 1st step of a 3-step process: APO Complaint Filed, APO Finalized, APO Collected.



State Administrative Penalty Order Action Types can be similar to the Federal Values:

- State/Local Administrative Penalty Order Finalized: Date a proposed complaint/petition is signed by a director or secretary with a final penalty. This final order has been accepted by the source. This action is an addressing action for a HPV, and is to be used in action linking. This is step 2 of a 3-step process: APO Complaint Filed, APO Finalized, APO Collected.

State Administrative Penalty Order Action Types can be similar to the Federal Values:

- State/Local Administrative Penalty Order Collected: Date the final payment of an APO is received. Interim payments should not be reported with this action. This is the 3rd step of a 3-step process: APO Complaint Filed, APO Finalized, APO Collected.



STATE SURVEYS

- Federally Reportable Violations: Many agencies are NOT reporting all violations—only HPV. *A policy statement on what is considered to be reportable is forthcoming.*



STATE SURVEYS-cont

- **Penalty Reporting:** Responses from some agencies indicate that there may be some issues with how penalties are currently reported. *A review of how penalties are reported in all agencies is in order.*
- **Non-Compliance (Violation) Start Date:** Of the surveys received, 50% reported tracking this information. Some of the larger states that responded, however, do not track this information (PA, LA, VA). *Generation of compliance status will be difficult without this information.*

STATE SURVEYS-cont

- New National Action Types Requested:
 - Warning Letters
 - Penalty Letters (State APO?)
 - Requests for Additional Information (State version of a 114 letter)
 - Demand Letter
 - Decree Lodged Date
 - Final Penalty

Again, more information is needed before new action types are established.

WORKGROUP DISCUSSIONS

- **Unilateral vs. Consent:** Do we need to discriminate between these in our action types?
- **Definition of Assessed Penalty:** EXACTLY when is the penalty defined as assessed?
- **Definition of Federally Reportable Violations.**



WORKGROUP DISCUSSIONS

- When is an NOV an NOV or when is it an Administrative Order?
 - Is the notice of an alleged violation?
 - Can the source appeal the action presented?
 - Can the agency enforce against the NOV?
 - Does the agency have legal penalty authority?
 - Are there dates where milestones have to occur?
 - Is the action unilateral?
 - Does the source have the ability to disagree?

MORE TO COME

More study and discussion must take place.

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